REMARKS

Applicants thank the Examiner for consideration of the present application. Applicants have carefully reviewed the Office Action dated June 09, 2009 (hereinafter "the Office Action"). Claims 1-20 are believed to be pending in this application. Each of claims 1-20 stands rejected in the Office Action. Reconsideration of each of the rejected claims in light of the remarks below is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 101

Each of claims 1-16 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In regard to these claims, the Examiner asserts that "Applicant does not adequately tie his/her steps to another statutory class to qualify as a § 101 statutory process." In regard to independent claims 1 and 8, these claims have been amended to recite a method comprising "a method executed by a server, the method comprising the steps of . . ." Applicants respectfully submit that a server is statutory subject matter and the step of executing the recited method on the server sufficiently ties such method to a statutory class as requested by the Office Action. Additionally, dependent claims 2-7 have been amended for consistency with claim 1 and to clarify their dependency thereon. Dependent claims 9 and 10 have been amended for consistency with claim 8 and to clarify their dependency thereon.

In regard to independent claim 11, this claim has been amended to recite "a billing system." Applicants respectfully submit that a billing system is statutory subject matter. Additionally, dependent claims 12-15 have been amended for consistency with claim 11 and to clarify their dependency thereon.

In regard to claim 16, this claim has been rewritten in independent form and is directed to a "tangible, machine readable medium." Applicants respectfully submit that a tangible, machine readable medium is statutory subject matter.

Applicants believe the above-described amendments overcome the Section 101 rejections of claims 1-16. Accordingly, Applicants respectfully request withdrawal of the Section 101 rejection of these claims.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

The Examiner has rejected claim 16 under 35 U.S.C. § 112, second paragraph, as being indefinite. As discussed above, claim 16 has been rewritten in independent form and directed to a "tangible, machine readable medium." Applicants believe such amendments overcome the Section 112, second paragraph rejection of claim 16. Accordingly, Applicants respectfully request withdrawal of the Section 112, second paragraph rejection of claim 16.

CLARITY OF REJECTIONS

Applicants note that many of the rejections presented in the Office Action lack reference to the specific section or structure of the cited reference (i.e., Ferguson) in which the Examiner believes each claim limitation is disclosed. Applicants also note the complexity of Applicants' disclosure and claims, as well as the complexity of the particular references relied on by the Examiner. 37 C.F.R. § 1.104, which is incorporated in MPEP § 707, provides that "[w]hen a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified."

Conversely, the Examiner establishes the rejections by reciting Applicants' claims in full followed by a citation to Ferguson. In particular regard to independent claims 1, 11, and 17, the citation to Ferguson includes twenty (20) columns of disclosure. It is unclear to Applicants which particular section within this large portion of Ferguson is considered to disclose the particular limitations of these claims. In this reply, the Applicants have attempted to interpret the specific disclosure of Ferguson within which the Examiner believes each limitation of the claims is disclosed. However, for clarity of the record and to expedite prosecution, Applicants respectfully request that any subsequent office action identify with more specificity the section or disclosure of any relied on reference wherein each separate claim limitation is believed to be taught.

35 U.S.C. § 103(a) REJECTIONS

Based on the entirety of the Office Action, Applicants believe each of claims 1-20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ferguson (US 5,819,092). For at least the reasons provided below, withdrawal of the Section 103 rejections of claims 1-20 is respectfully requested.

I. INDEPENDENT CLAIMS 1 and 11

The Examiner has rejected each of independent claims 1, 11, and 17 as being unpatentable over Ferguson. Applicants respectfully traverse this rejection as improper because the Examiner failed to establish a proper *prima facie* case of obviousness based on Ferguson. In particular, the Examiner has failed to perform the factual inquiry as required under *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). In *KSR Int'l. Co. v. Teleflex, Inc. et al.*, 127 S.Ct. 1727 (2007), the United States Supreme Court clarified the test for obviousness. The

Supreme Court in *KSR* reaffirmed that certain principles govern the analysis of obviousness, including the reaffirmation that the question of obviousness must be resolved on the basis of the factual inquiries identified in its *Graham* decision. The first of such factual inquiries is a determination of the scope and content of the prior art. In this regard, the Examiner did not properly evaluate the scope and content of Ferguson.

In support of the Section 103 rejection of independent claims 1, and 11, the Examiner asserts that Ferguson teaches each limitation of these claims except for that "the debiting of the network user is done before allowing the transport of the packet traffic for the network user." Applicants respectfully disagree.

First, Ferguson fails to disclose "determining from said rules and each packet address, a respective billing tariff and a network user account to be debited." Although Ferguson does disclose a Fee Computation Language that may be used to define the costs of various services (see, e.g., Col. 34 lines 20-56), Ferguson is simply silent as to how the network user account is to be debited for, for example, a purchase. That is, Applicants have found no disclosure in Ferguson wherein the determination of the network user account is discussed. In particular, Ferguson fails to disclose that such determination is made based on the packet address. Nor can it be said that Ferguson inherently teaches that the network user account to be debited is determined based on each packet address. "Inherency . . .may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Hansgirg v. Kemmer*, 102 F.2d 212, 40 U.S.P.Q. 665, 667 (C.C.P.A. 1939); *In re Oelrich and Divigard*, 666 F.2d 578, 212 U.S.P.Q. 323, 326 C.C.P.A. 1981). It cannot be said that the network user account must be determined based on the packet address. As such, Ferguson does not inherently disclose such determination. Rather, in

Ferguson, it is much more likely that the network user account is determined based on a log in procedure (e.g., user name, password, etc.)

It should be appreciated that the system of Ferguson is quite different from the billing system disclosed in Applicants' application. Ferguson is directed to an online service development system including a single, central server hardware platform 100 on which is stored HTTP server software 101, HTTP Extension Software 103, and Server Service Repository 107. (Ferguson, Col. 7, line 58 – Col. 8, line 3). Developers may use an Online Service Development Tool 109 to design online services. (Col. 8, lines 4-14). In use, the single, central server hardware platform 100 distributes and controls the ecommerce accounting of the online services. (Col. 8, lines 15-53). That is, all of the services and accounting of the online service system of Ferguson are stored on and controlled by the server hardware platform 100 and are delivered only across the packet-based network 150.

Conversely, Applicants' specification discloses a billing system in which a mobile terminal may access services located on separate servers or otherwise provided by separate entities. Additionally, such services are provided across a mobile wireless network and a packet-based network. In such a system, a central login procedure from which the user account information may be obtained or cross-referenced may not be achievable due to the disparate service providers.

Additionally, Ferguson fails to disclose "obtaining a coupon from an account database, representing an amount of credit." Ferguson does disclose debiting and crediting a user's account, but fails disclose use of a "coupon." In this regard, the Examiner appears to be interpreting a "coupon" simply as a debit or credit. However, such an interpretation is overly broad and is without regard to the teaching of Applicants' specification. As described in

Applicants' specification, use of the coupon facilitates the sale of services from multiple, disparate service provides (which Ferguson is not concerned with), charging of different rates depending on the contact (i.e., is the user simply browsing a website or downloading music), crediting of the provider (e.g., the provider is credited for the download but not the browsing), etc. As such, a coupon includes data or parameters in addition to the simple dollar amount of the credit/debit. Accordingly, Ferguson simply fails to disclose the use of a coupon and fails to offer any motivation for such use since the services offered in Ferguson originate from a central service provider, albeit different developers.

Accordingly, for at least the reasons provided above, Ferguson fails to disclose or suggest every limitation of independent claims 1 and 11. As such, Ferguson cannot be said to render these claims obvious. Applicants, therefore, respectfully request withdrawal of the Section 103 rejection of claims 1 and 11.

II. INDEPENDENT CLAIM 8

Claim 8 recites, *inter alia*, "obtaining a coupon from an account database, representing an amount of credit." As such, for at least the reasons discussed above in regard to claims 1 and 11, Ferguson fails to disclose or suggest at least this limitation of claim 8. Accordingly, for at least this reason, Applicants respectfully request withdrawal of the Section 103 rejection of claim 8.

III. INDEPENDENT CLAIMS 16

Claim 16 has been amended to include limitations similar to those of claim 11. Accordingly, all the arguments presented above in regard to claim 11 are equally applicable to

claim 16 and are incorporated herein by reference. For at least these reasons, Applicants respectfully request the withdrawal of the Section 103 rejection of claim 16.

IV. INDEPENDENT CLAIMS 17

The Examiner asserts that Ferguson teaches each limitation of claim 17. However, for at least the reasons provided above in regard to claims 1 and 11, Ferguson fails to disclose at least "a packet analyzer for determining from said rules and each packet address, a respective billing tariff and a network user account to be debited or credited for the transport of that packet" or "means for obtaining a coupon from an account database." Additionally, the Examiner has failed to point to any structure of Ferguson that is believed to teach "a packet analyzer" or a "means for obtaining a coupon." For at least this reason and the reasons provided above in regard to claims 1 and 11, Ferguson fails to render claim 17 obvious. Accordingly, Applicants respectfully request the withdrawal of the Section 103 rejection of claim 17.

V. DEPENDENT CLAIMS

Each of dependent claims 2-7 includes the limitations of independent claim 1. Each of dependent claims 9 and 10 includes the limitations of independent claim 8. Each of dependent claims 12-15 includes the limitations of independent claim 11. Additionally, each of dependent claims 18-20 includes the limitations of independent claim 17. For at least the reasons provided above, Ferguson fails to render independent claims 1, 8, 11, and 17 obvious. As such, Ferguson also fails to render dependent claims 2-7, 9-10, 12-15, and 18-20 obvious for at least the reasons provided above in regard to independent claims 1, 8, 11, and 17. *See In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) ("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious."). In light of the reasons for
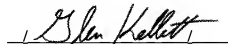
withdrawal of the rejections of claims 1, 8, 11, and 17 any arguments specific to claims 2-7, 9-10, 12-15, and 18-20 are held in abeyance without prejudice or admission to any assertion made in the Office Action in order to expedite prosecution.

CONCLUSION

In view of the foregoing, it is submitted that this application is in a condition for allowance. Action to that end is hereby solicited. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 261-7959.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response. The Commissioner is hereby authorized to charge the fee for such Petition and any shortage of fees, and credit any overpayment of fees, to the Deposit Account No. 14-1315 with reference to file 15184IDUSCIP.

Respectfully submitted,

Glen M. Kellett
Registration No. 60,202
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204-3535
Telephone: (317) 261-7959
Fax: (317) 231-7433